IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4419 OF 2005

Messr. Saurashtra Cement & Chemical
Industries Ltd., ..Petitioner.

Versus

M/s. Jagmi Investments Ltd., & Ors. ..Respondents.

Mr. V.A. Thorat,Sr. Advocate with R.A. Thorat for the Petitioner.

Mr.I.M.Khairadi with Vinnet B.Naik for Respondents.

CORAM : S. A. BOBDE, J.

DATED : 14TH JULY, 2005.

P.C.:

1. Rule, returnable forthwith.

2. Mr. Khairadi waives service of rule for the Respondents.

3. Heard by consent.

4. The petitioner seeks a direction that the

eviction suit filed by them be directed to be retained by the Judge who has substantially heard the matter.

5. It appears that the petitioner's suit for eviction of the respondents was heard by H.H.J. Pandye upto 23rd June, 2005 when the assignments were changed in the Small Causes Court; as a result of which this matter was assigned to the court of H.H.J. Borase. It was urged on behalf of the petitioner that the evidence has been almost entirely received by H.H.J. Pandye from some time in the middle of November, 2004 to end of March, 2005. Even written statements of defendants 2A and 2B, who are brought on record due to the demise of original defendant No.2, have been received by that Judge, who has also received the affidavit in evidence and heard the cross examination of the plaintiff's witness.

6. The learned counsel for the petitioner relied on office order No. 42/1992 which clarifies that part heard matters in which the arguments are partly heard and /or matter are adjourned for arguments and /or for Judgment should be transferred to the Court to which the Judge is transferred. The office order is issued by the Chief Judge of the Small Causes Court.

However, it appears that the office order has no application to such a case because, admittedly, the matter has not been part heard in the sense contemplated by the office order. Neither the arguments are partly heard nor is the matter adjourned for judgment. Admittedly, even the evidence of defendants 2A and 2B is yet to be began. Therefore, the matter cannot be treated as part heard. There is no doubt that it is always convenient for a Judge, who has heard the evidence, to hear the matter but that is not the case here. In the circumstances, it would be inappropriate to grant the direction prayed for by the petitioner.

7. Petition is, therefore, dismissed. However, having regard to the pendency of the matter, by consent, the suit is expedited and the same shall be decided by the Small Causes Court No.13, not latter than three months from the next date before that court.

14.07.2005 (S.A.BOBDE,J.)

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